



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2015-0084]

RIN 1625-AA00, AA11

Great Lakes—Regulated Navigation Areas and Safety Zones

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

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SUMMARY: The Coast Guard proposes to amend its Great Lakes Regulated Navigation Areas regulations to include two safety zones to close designated waters for recreational ice users and three Regulated Navigation Areas to manage vessel traffic in ice-prone waterways. Further, the Coast Guard proposes to redefine (without changing) the three existing regulated navigation areas in the rule as safety zones. These proposed amendments provide needed updates to the regulations and align the rule with existing waterway regulations. The proposed amendments are necessary to protect waterway users, vessels, and mariners from hazards associated with winter conditions and navigation.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2015-0084 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

(4) Delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments. To avoid duplication, please use only one of these four methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LTJG Matthew Stroebel, Ninth Coast Guard District Prevention; telephone 216-902-6060, email [matthew.k.stroebel@uscg.mil](mailto:matthew.k.stroebel@uscg.mil). If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202-366-9826 or

1-800-647-5527.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking
RNA	Regulated Navigation Area

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2015-0084), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at

the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number [USCG-2015-0084] in the "Search" box and click "Search." Click the "Comment" box on the line associated with this supplemental notice of proposed rulemaking. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

## 2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number USCG-2015-0084 in the "SEARCH" box and click "Search." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation

West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

### 3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

### 4. Public meeting

We do not now plan to hold a public meeting. You may submit a request for one using one of the four methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

### B. Regulatory History and Information

There is no recent regulatory history related to 33 CFR 165.901. The Coast Guard made a substantive amendment to the rule on August 4, 1983 (48 FR 35402) to adjust the position of

the second RNA on Lake Huron under § 165.901(a)(2) .

C. Basis and Purpose

The legal basis for this rule is the Coast Guard's authority to establish RNAs and limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

33 CFR 165.901 lists three Great Lakes RNAs—(1) the waters of Lake Huron known as South Channel; (2) the waters of Lake Huron between Mackinac Island and St. Ignace, Michigan; and (3) the waters of Lake Michigan known as Gray's Reefs passage. Although termed RNAs, these three areas are actually closure zones. Title 33 CFR 165.901(c) of the rule authorizes the Captain of the Port (COTP) Sault Sainte Marie to close and open the RNAs as ice conditions dictate. Normally, closures take place once in the winter with openings occurring in the spring. When closed, vessels are prohibited from navigating the RNAs without COTP authorization.

The Coast Guard has identified the need for two additional closure areas on the Great Lakes, specifically, (1) designated waters of Lake Huron on Saginaw Bay, Michigan; and (2) U.S. waters of Lake Erie in the vicinity of the South Passage and the Erie Islands, Ohio. The specific coordinates for these closures areas are set forth in the proposed

regulatory text under § 165.901(a)(1)-(2). These areas attract recreational ice users during winter months. Vessel traffic would disrupt ice integrity in these areas and pose risks to these recreational waterway users, which may include people and vehicles falling through the ice. To mitigate these risks, the Coast Guard proposes to establish safety zones to close these areas to vessel traffic during the winter.

The Coast Guard also identified the need for three vessel traffic management areas or RNAs on the Great Lakes. These areas generally include (1) the waters of Lake Erie known as the Maumee Bay Entrance Channel; (2) the waters connecting Lake Huron to Lake Michigan known as the Straits of Mackinac; and (3) the waters of Lake Michigan known as Green Bay. Specific coordinates for these RNAs are set forth in the proposed regulatory text under § 165.901(c)(1)-(3). Vessel traffic ply the waters in these areas during winter months; however, seasonal ice conditions, which can worsen on short notice, pose risks to vessel traffic in these areas. To manage these risks, the Coast Guard proposes to establish RNAs in these areas to regulate vessel movement and safeguard vessel traffic. During periods of ice-cover, the Coast Guard anticipates issuing temporary vessel operating requirements, as provided for under 33 CFR 165.11, to promote the safe

passage of vessels through the RNAs. Bases for these temporary traffic rules include winter navigation, channel obstructions, unusual weather conditions, or unusual water levels. Such temporary operating requirements may include transiting the RNA with an assist tug or standing fast until conditions permit safe passage.

#### D. Discussion of Proposed Rule

In light of the foregoing discussion, the Coast Guard proposes to amend 33 CFR 165.901 to add two safety zones to protect recreational ice users and three RNAs to safeguard vessel traffic. In addition, the three closure areas in the rule, presently termed RNAs, will be redefined as safety zones. This redefinition will not affect the position or seasonal implementation of these closure areas. These proposed amendments will provide regulatory authority for the Coast Guard (1) to close designated waters on the Great Lakes to vessel traffic to protect recreational ice users during the winter season; (2) to manage vessel traffic in designated areas to protect vessels and mariners from dangers of ice conditions; and (3) to redefine the existing RNAs in the rule to safety zones. Since the existing closure areas do not involve vessel traffic management, they are more appropriately defined as safety zones, which generally provide for the closure of a waterway in the interest of safety.



## E. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

### 1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. We conclude that this proposed rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The proposed amendments involve closure areas and vessel management areas, designed to be implemented only during winter months, as ice conditions dictate. As to the impact of the closure area on Lake Erie near the South Channel and the Erie Islands, OH, the Coast notes that industry vessels have taken alternative routes bypassing the Erie Islands when recreational ice users are present. The Coast Guard anticipates the same practice when

this area is closed. Further, regarding the closure area on the waters of Lake Huron in Saginaw Bay, Michigan, the Coast Guard anticipates closing the bay after giving due consideration to industry's need to traverse the area. Moreover, under certain circumstances, the Coast Guard may permit vessel traffic to transit the closure areas. Regarding the three proposed vessel management areas, they are designed to regulate the conditions of vessel transit for safety. Overall, we expect the economic impact of this proposed rule to be minimal and that a full Regulatory Evaluation is unnecessary.

## 2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule may affect the following entities, some of which might be

small entities: the owners or operators of vessels intending to transit the proposed safety zones and RNAs during the winter months.

These proposed amendments will not have a significant economic impact on a substantial number of small entities for the reasons cited in the Regulatory Planning and Review section.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. The Coast Guard will not retaliate against small entities that question or complain

about this proposed rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act

addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### 11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### 13. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and

Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. Because this proposed rule involves amendments to navigation regulations and establishment of a safety zones, it is categorically excluded under paragraph 34(g) of the Commandant Instruction. A Categorical Exclusion Determination (CED) and an environmental analysis checklist are available in the docket where indicated

under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165 - REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 165.901 to read as follows:

§ 165.901 Great Lakes-regulated navigation areas and safety zones.

(a) The following are safety zones:

(1) Lake Erie. The U.S. waters of Lake Erie at the intersection of the International Border at 082°55'00" W, following the International Border eastward to the intersection of the International Border at 082°35'00" W, moving straight south to position 41°25'00" N, 082°35'00" W, continuing west to position 41°25'00" N, 082°55'00" W, and ending north at the International Border and 082°55'00" W".



(2) Lake Huron. (i) The waters of Lake Huron known as South Channel between Bois Blanc Island and Cheboygan, Michigan; bounded by a line north from the mainland at 45°39'48" N, 84°27'36" W; to Bois Blanc Island at 45°43'42" N, 84°27'36" W; and a line north from the mainland at 45°43'00" N, 84°35'30" W; to the western tangent of Bois Blanc Island at 45°48'42" N, 84°35'30" W.

(ii) The waters of Lake Huron between Mackinac Island and St. Ignace, Michigan, bounded by a line east from position 45°52'12" N, 84°43'00" W; to Mackinac Island at 45°52'12" N, 84°39'00" W; and a line east from the mainland at 45°53'12" N, 84°43'30" W; to the northern tangent of Mackinac Island at 45°53'12" N, 84°38'48" W.

(iii) The waters of Lake Huron known as Saginaw Bay, Michigan; bounded by a line from Port Austin Reef Light (LL-10275) at 44°04'55" N, 082°58'57" W; to Tawas Light (LL-11240) at 44°15'13" N, 083°26'58" W; to Saginaw Bay Range Front Light (LL-10550) at 43°38'54" N, 083°51'06" W; then to the point of beginning.

(3) Lake Michigan. The waters of Lake Michigan known as Gray's Reef Passage bounded by a line from Gray's Reef Light (LL-2006) at 45°46'00" N, 85°09'12" W; to White Shoals Light (LL-2003) at 45°50'30" N, 85°08'06" W; to a point at 45°49'12"

N, 85°04'48" W; then to a point at 45°45'42" N, 85°08'42" W; then to the point of beginning.

(b) Regulations. The District Commander or respective Captain of the Port (COTP) will enforce these safety zones as ice conditions dictate. Under normal seasonal conditions, only one closing each winter and one opening each spring are anticipated. Prior to closing or opening these safety zones, the District Commander or respective COTP will give the public advance notice, not less than 72 hours prior to the closure. The general regulations in 33 CFR 165.23 apply. The District Commander or respective COTP retains the discretion to permit vessels to enter/transit a closed safety zone under certain circumstances.

(c) The following are regulated navigation areas (RNAs):

(1) Lake Erie. The waters of Lake Erie known as the Maumee Bay Entrance Channel between Maumee Bay Entrance Channel Light at 41°49'32" N, 083°11'37" W; and Grassy Island at 41°42'23" N, 083°26'49" W.

(2) Straits of Mackinac. The waters connecting Lake Huron to Lake Michigan known as the Straits of Mackinac from Lansing Shoal Light at 45°54'8" N, 085°33'25" W southwest to 45°50'7" N, 085°34'3" W to Old Mackinac Point Lighthouse at 45°47'36" N, 084°44'23" W eastward to Bois Blanc Island at 45°49'7" N,

084°34'28" W then northwest to Mackinaw Island at 45°51'5" N, 084°36'19" W, encompassing Round Island, westward to the northern point of the Mackinaw Bridge at 45°50'57" N, 084°43'47" W and returning to the beginning at Lansing Shoal Light.

(3) Green Bay. The waters of Lake Michigan known as Green Bay from Rock Island Passage or Porte Des Morts Passage north to Escanaba Light at 45°44'48" N, 087°02'14" W; south to the Fox River Entrance at 44°32'22" N, 088°00'19" W, to the Sturgeon Bay Ship Canal from Sherwood Point Light at 44°53'34" N, 087°26'00" W; to Sturgeon Bay Ship Canal Light at 44°47'42" N, 087°18'48" W; and then to the point of beginning.

(d) Regulations. In the RNAs under paragraph (c) of this section, the District Commander or respective COTP may issue orders to control vessel traffic for reasons which include but are not limited to: channel obstructions, winter navigation, unusual weather conditions, or unusual water levels. Prior to issuing these orders, the District Commander or respective COTP will provide advance notice as reasonably practicable under the circumstances. The general regulations in 33 CFR 165.13 apply. The District Commander or respective COTP retains the discretion to authorize vessels to operate outside of issued orders.

Dated: May 4, 2015.

F. M. Midgette,  
Rear Admiral, U.S. Coast Guard,  
Commander, Ninth Coast Guard District.  
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